

Message Text

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TO AMEMBASSY BERLIN IMMEDIATE

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EXDIS

E.011652: GDS

TAGS: PFOR, PINT, GE, US

SUBJECT: SPECIAL TALKING POINTS WITH FIRST SECRETARY

-- HONECKER RE US/GDR CONSULAR CONVENTION

REFERENCE: BERLIN 5302

FOR AMBASSADOR COOPER

1. SUMMARY. THERE FOLLOW CONTINGENCY GUIDELINES FOR THE AMBASSADOR'S USE, SHOULD HONECKER RAISE CERTAIN ITEMS OF DISPUTE WHICH SURFACED DURING THE WASHINGTON CONSULAR TALKS THE POSITIONS DESCRIBED WERE EITHER EXPLAINED OR HELD IN RESERVE FOR USE DURING THE RECENT DISCUSSIONS. END SUMMARY

2. IF HONECKER FOCUSES ON THE CONSULAR CONVENTION, HE MAY MENTION SOME OF THE CONTROVERSIAL POINTS WHICH AROSE DURING THE RECENT TALKS IN WASHINGTON. DEPENDING ON WHICH OF SEVERAL LINES HE TAKES, THE FOLLOWING IS DETAILED FOR USE ON CONTINGENCY BASIS.

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3. HONECKER MAY SIMPLY REPEAT THE GDR ARGUMENT FOR INCLUDING A DEFINITION OF NATIONALITY, I.E. IT WILL SIMPLIFY CONSULAR ARRANGEMENTS AND IS NECESSARY TO REBUT FRG CLAIM

TO REPRESENT ALL GERMANS ABROAD, "WHICH IS CONTRARY TO INTERNATIONAL LAW." ABSENCE OF A DEFINITION IMPLIES THAT USG DOES NOT ACCEPT FACT OR GDR NATIONALITY. OUR REPLY TO THIS DURING CONSULAR TALKS WAS THAT IT HAS BEEN OUR CONSISTENT PRACTICE TO AVOID NATIONALITY DEFINITIONS IN CONSULAR TREATIES. SUCH DEFINITIONS ARE UNNECESSARY TO THE FUNCTIONING OF A CONSULAR CONVENTION AND ARE NOT CONTAINED IN THE VIENNA CONSULAR CONVENTION. DEFINITION OF NATIONALITY CAN BE A COMPLEX MATTER, AND INVOLVES INTERNATIONAL LEGAL CONSIDERATIONS WHICH IT WOULD BE INAPPROPRIATE TO SPELL OUT IN A CONSULAR CONVENTION. THERE ARE ALSO POLITICAL IMPLICATIONS IN SUCH A DEFINITION WITH WHICH A TECHNICAL CONSULAR AGREEMENT SHOULD NOT BE BURDENED. THE USG ACCEPTS THE REALITY OF GDR NATIONALITY, AND ABSENCE OF A DEFINITION DOES NOT IMPLY THE CONTRARY.

4. HE MAY REPEAT AMBASSADOR KLOBES IMPLIED DEMAND THAT THE USG AGREE TO DEFINITION OF NATIONALITY AS PRE-CONDITION TO SETTING DATE FOR SECOND ROUND OF CONSULAR DISCUSSIONS. TO THIS YOU MAY RESPOND BY NOTING THAT YOU HAVE BEEN INFORMED OF THE IMPLICATIONS TO THIS EFFECT RAISED BY THE GDR REP IN HIS CLOSING REMARKS IN WASHINGTON. THE DEPARTMENT FINDS THE NOTION DISTURBING THAT PROGRESS ON A CONSULAR CONVENTION DEPENDS ON USG MOVEMENT ON THE NATIONALITY ISSUE, PARTICULARLY AS YOU UNDERSTAND THERE IS NO FLEXIBILITY IN OUR POSITION ON THIS MATTER.

5. IF HONECKER SHOULD ASK POINT BLANK WHETHER THE USG WOULD PERMIT FRG CONSULAR REPRESENTATION OF A GDR CITIZEN, THE FOLLOWING TALKING POINTS ARE SUGGESTED:

A. USA FULLY ACCEPTS CONCEPT OF GDR NATIONALITY. PARA THREE OF THE AGREED MINUTE ON ESTABLISHMENT OF DIPLOMATIC RELATIONS CAN BE INTERPRETED IN NO OTHER WAY. OUR PROPOSED CONSULAR CONVENTION ADMITS OF NO OTHER VIEW. WE DO NOT CONSIDER THAT THIS REQUIRES ANY DEMONSTRATION.

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B. USG NEVER MAKES THE LAW OF ONE STATE EXCLUSIVELY DETERMINATIVE OF CONSULAR JURISDICTION IN THE US OVER AN INDIVIDUAL WHETHER THAT BE FRG OR ANY OTHER STATE'S LAW.

C. IF A GDR NATIONAL IS DETAINED, THE GDR CONSUL WILL BE NOTIFIED AND GRANTED ACCESS. IF, IN ANY CASE, A DETAINED GERMAN SHOULD ASK FOR AN FRG CONSUL, THE FRG

CONSUL TOO WOULD BE NOTIFIED AND GRANTED ACCESS. SHOULD
THE DETAINED PERSON INSIST ON HAVING ONLY ONE CONSULAR

SERVICE PROTECT HIM, WE WOULD DECIDE BETWEEN THE OVER-
LAPPING CONSULAR CLAIMS IN FULL CONFORMITY WITH
INTERNATIONAL LAW.

D. HONECKER MAY TALK TO YOU THAT WE HAVE INCLUDED LANGUAGE
IN OUR DRAFT CONVENTION IMPLYING THAT EAST BERLIN IS NOT
THE CAPITAL OF THE GDR. (THIS WOULD BE AN OVERSIMPLIFICA-
TION.) TO THIS YOU MIGHT STATE IT IS YOUR IMPRESSION
THAT US IN CERTAIN PASSAGES RECOMMENDS PHRASE "WITHIN
JURISDICTION OF RECEIVING STATE" (RATHER THAN "WITHIN THE
TERRITORY OF", AS THE GDR WISHES) AS ENTIRELY NEUTRAL
PHRASEOLOGY WHICH ON FACE OF IT DOES NOT IMPLY ANYTHING.
IT IS OF COURSE A FACT THAT US AND GDR HAVE
DIFFERING VIEWS ON STATUS OF EAST BERLIN. KISSINGER

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